

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE CIM-SQ TRANSFER CASES

Case No. 5:20-cv-06326-EJD

This Document Relates To:  
24-cv-07116-EJD; *Burroughs v. Allison, et al.*

**ORDER OF SERVICE**

**INTRODUCTION**

Plaintiff, a California prisoner, filed a pro se civil rights action. Plaintiff alleged that defendants violated his constitutional rights by transferring over 100 inmates, some of whom were infected with COVID-19, from the California Institution for Men (CIM) to San Quentin State Prison (SQSP)<sup>1</sup> in May 2020. The case is now before the Court for screening pursuant to 28 U.S.C. § 1915A(a), and service of the complaint on some defendants is ordered. Plaintiff will be granted leave to proceed in forma pauperis by separate order.

This case has been consolidated with cases in this district related to the 2020 prisoner transfer and related to the first case filed, No. 5:20-cv-06326-EJD, which now has the caption “In Re CIM-SQ Transfer Cases.” Pro se prisoner cases that are part of the consolidated matter are stayed except for the purposes of service. Service shall therefore proceed in plaintiff’s case as ordered below, but the case will remain stayed for all other purposes. The docket for Case No. 24-7116 and all other individual dockets have been closed. If plaintiff wishes to file any motions, he

<sup>1</sup> SQSP is now called the San Quentin Rehabilitation Center. The former name is used in this Order for clarity.

1 must file them in Case No. 5:20-cv-06326-EJD and include his original case number, No. 24-  
2 7116, on the left side of the heading.

### 3 STANDARD OF REVIEW

4 Federal courts must engage in a preliminary screening of cases in which prisoners seek  
5 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §  
6 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of  
7 the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief  
8 may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.*  
9 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901  
10 F.2d 696, 699 (9th Cir. 1990).

11 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
12 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the  
13 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon  
14 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to  
15 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to  
16 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a  
17 formulaic recitation of the elements of a cause of action will not do . . . . Factual allegations must  
18 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
19 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to  
20 state a claim for relief that is plausible on its face.” *Id.* at 1974.

21 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
22 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
23 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.  
24 42, 48 (1988).

25 If a court dismisses a complaint for failure to state a claim, it should “freely give  
26 leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). A court has discretion to  
27 deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the movant,  
28 repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the

opposing party by virtue of allowance of the amendment, [and] futility of amendment.”  
*Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

### LEGAL CLAIMS

Plaintiff names as defendants California Department of Corrections and Rehabilitation (CDCR) secretary Kathleen Allison, CDCR Medical Director Steven Tharatt, and “CIM Medical Director/Executives.” Dkt. No. 10 at 1. He alleges that the transfer of prisoners caused a COVID outbreak at SQSP, see Dkt. No. 2 at 3, during which plaintiff contracted COVID-19 around May 30, 2020. Dkt. No. 1 at 6. He seeks damages.

Liberally construed, plaintiff’s allegations state a plausible claim for deliberate indifference to plaintiff’s safety against Allison, in violation of the Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

Plaintiff’s claims cannot proceed against Steven Tharratt. The Court understands, as the Attorney General has represented to another court in this district, that “[t]o the best of [the Attorney General’s] knowledge, [Dr.] Tharratt died on August 20, 2020.” See Case No. 3:20-cv-07845-CRB, Dkt. Nos. 37, 37-1. The Court takes judicial notice pursuant to Federal Rule of Evidence 201 of the filing in that case, which attaches Dr. Tharratt’s obituary published on the California Department of Corrections and Rehabilitation website on October 6, 2020, *available at* <https://www.cdcr.ca.gov/insidecdcr/2020/10/06/dr-robert-tharratt-longtime-cchcs-medical-director-passes-away/>. See *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (federal courts “may take judicial notice of court filings and other matters of public record”); *Bullock v. Johnson*, No. CV 15-2070 PA (AS), 2018 WL 5880736, at \*13 n.19 (C.D. Cal. Aug. 10, 2018), report and recommendation adopted, No. CV 15-2070 PA (AS), 2018 WL 4791089 (C.D. Cal. Oct. 3, 2018) (taking judicial notice of CDCR obituary).

Dr. Tharratt’s death therefore preceded the filing of this action. See Dkt. No. 1. “[A] party cannot maintain a suit on behalf of, or against, or join, a dead person, or in any other way make a dead person (in that person’s own right, and not through a properly represented estate or successor) party to a federal lawsuit.” *LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 943, 955 (9th Cir. 2020). Defendant Tharratt was therefore not an appropriately named Defendant

1 at the onset of this litigation and will be dismissed.

2 Nor can plaintiff's claims proceed against the general, unnamed executives to whom he  
3 refers. Plaintiff may later move to amend his complaint to name additional defendants.

#### 4 CONCLUSION

5 1. Defendant Tharratt is DISMISSED.

6 2. Plaintiff has stated a cognizable claim against defendant Allison for violation of the  
7 Eighth Amendment by deliberate indifference to his health and safety needs.

8 3. The Court orders that service on Allison shall proceed under the California  
9 Department of Corrections and Rehabilitation's ("CDCR") e-service program for civil rights cases  
10 from prisoners in the CDCR's custody:

11 In accordance with the program, the clerk is directed to serve on the CDCR via email the  
12 following documents: the operative complaint (Dkt. No. 10 in case 24-cv-07116-EJD), this Order  
13 of Service, a CDCR Report of E-Service Waiver form, and a summons. The clerk also shall serve  
14 a copy of this order on the plaintiff.

15 No later than 40 days after service of this order via email on the CDCR, the CDCR shall  
16 provide the court a completed CDCR Report of E-Service Waiver advising the court which  
17 defendant(s) listed in this order will be waiving service of process without the need for service by  
18 the USMS and which defendant(s) decline to waive service or could not be reached. The CDCR  
19 also shall provide a copy of the CDCR Report of E-Service Waiver to the California Attorney  
20 General's Office which, within 21 days, shall file with the Court a waiver of service of process for  
21 the defendant(s) who are waiving service.

22 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for each  
23 defendant who has not waived service according to the CDCR Report of E-Service Waiver a  
24 USM-285 Form. The clerk shall provide to the USMS the completed USM-285 forms and copies  
25 of this order, the summons and the operative complaint for service upon each defendant who has  
26 not waived service. The clerk also shall provide to the USMS a copy of the CDCR Report of E-  
27 Service Waiver.

28 4. All defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure

1 requires them to cooperate in saving unnecessary costs of service of the summons and complaint.  
2 Pursuant to Rule 4, if defendants, after being notified of this action and asked by the Court, on  
3 behalf of plaintiff, to waive service of the summons, fail to do so, they will be required to bear the  
4 cost of such service unless good cause can be shown for their failure to sign and return the waiver  
5 form.

6 5. All communications by plaintiff with the Court must be served on defendants'  
7 counsel by mailing a true copy of the document to defendants' counsel. The Court may disregard  
8 any document which a party files but fails to send a copy of to his opponent. Until defendants'  
9 counsel has been designated, plaintiff may mail a true copy of the document directly to  
10 defendants, but once defendants are represented by counsel, all documents must be mailed to  
11 counsel rather than directly to defendants.

12 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the  
13 Court informed of any change of address and must comply with the Court's orders in a timely  
14 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
15 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every  
16 pending case every time he is moved to a new facility.

17 7. Any motion for an extension of time must be filed no later than the deadline sought  
18 to be extended and must be accompanied by a showing of good cause. Plaintiff is cautioned that  
19 he must include the case name and case number for this case on any document he submits to the  
20 Court for consideration in this case.

21 8. The case will remain stayed for all purposes other than service of the complaint on  
22 defendants.

23 **IT IS SO ORDERED.**

24 Dated: May 19, 2025

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27 EDWARD J. DAVILA  
28 United States District Judge